

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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L.P.O.E., INC. & DIMA CORPORATION,

Civ. No. 10-4133 (RHK/LIB)

Plaintiffs,

v.

**REPORT AND  
RECOMMENDATION**

CITY OF DULUTH & CITY OF HERMANTOWN,

Defendant.

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This matter came before the undersigned United States Magistrate Judge upon a routine supervision of the case and a general assignment made in accordance with the provisions of 28 U.S.C. § 636.

Plaintiffs commenced this action October 4, 2010. On March 18, 2011, the Defendant City of Hermantown had not yet made an appearance in this action even though more than 120 days had passed since Plaintiffs had filed their Complaint. As such, the Court issued an Order directing Plaintiff as follows:

“Within 20 days of the date of this order, Plaintiffs shall provide proof of service, or show good cause for an extension of time to serve the Defendant City of Hermantown. If Plaintiffs fail to comply with these directives, it shall be recommended that this action be dismissed without prejudice for failure to effect proper service and for failure to prosecute.”

(Dkt. 3, at pp. 1-2); see also, Fed. R. Civ. Pro. 4(m)(“If a defendant is not served with 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time”).

The deadline for responding to the Court's March 18 Order has expired and Plaintiffs have failed to submit any response, nor has the Defendant City of Hermantown since made an appearance in this action. Since Plaintiffs were forewarned of the potential consequences for failing to timely serve Defendant City of Hermantown, the Court recommends that this action be dismissed as against the City of Hermantown for failure to prosecute by the Plaintiffs.

Based upon the above, and upon all the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

This action be dismissed without prejudice against the City of Hermantown for failure to serve the Defendant City of Hermantown and for lack of prosecution.

DATED: April 19, 2011

s/Leo I. Brisbois  
LEO I. BRISBOIS  
United States Magistrate Judge

### **NOTICE**

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and serving all parties **by May 3, 2011**, a writing that specifically identifies the portions of the Report to which objections are made and the bases for each objection. A party may respond to the objections within fourteen days of service thereof. Written submissions by any party shall comply with the applicable word limitations provided for in the Local Rules. Failure to comply with this procedure may operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals. This Report and Recommendation does not constitute an order or judgment from the District Court, and it is therefore not directly appealable to the Court of Appeals.